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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,544	12/28/2001	Randall Rex Calvert	501059.01	4703

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EXAMINER

LEWIS, RALPH A

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 03/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

<b>Office Action Summary</b>	Application No. <b>10/025,544</b>	Applicant(s) <b>Calvert</b>
	Examiner <b>Ralph Lewis</b>	Art Unit <b>3732</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on \_\_\_\_\_.

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 1-41 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 37-41 is/are allowed.

6)  Claim(s) 1-11, 14-19, 22-25, 27-33, 35, and 36 is/are rejected.

7)  Claim(s) 12, 13, 20, 21, 26, and 34 is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2, 3

6)  Other: \_\_\_\_\_

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**Rejections based on Prior Art**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-7, 14, 17, 18, 22-25, 30, 32 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Billet et al (WO 98/11842) (for purposes of this rejection US 6,183,253 B1 is relied upon as an English translation of the earlier published PCT application).

Billet et al disclose an elongated body 8 comprised of an implantable resilient material that is optically transmissive (note column 3, lines 29-34). In regard to claim 5, note column 3, lines 39-41). In regard to claims 6 and 7, note column 3, lines 15-20. In regard to claim 14, note elongate support portion 17. In regard to claim 22, the outer surface of 17 meets the vague "handle limitation." In regard to claim 23, note fiber 12 and column 3, lines 23, 24 which indicate that a single fiber may be used. In regard to claim 25, note column 3, lines 3-6.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 2, 3, 8, 15, 16, 27, 29, 31 and 36 rejected under 35 U.S.C. 103(a) as being unpatentable over Billet et al (WO 98/11842) (for purposes of this rejection US 6,183,253 B1 is relied upon as an English translation of the earlier published PCT application).

In regard to claims 2, 3, 15, and 16, Billet et al indicate that the disclosed plug 8 is made of fibers that are permeable to light (column 3, line 32) but does not explicitly state that the fibers are transparent and/or translucent. One of ordinary skill in the art would readily appreciate and find obvious the use of transparent and/or translucent fibers as the “permeable to light” fibers of Billet et al. In regard to claim, the selection of a conventional radiopaque material for the radiopaque material disclosed by Billet et al (column 3, line 18, would have been obvious to one of ordinary skill in the art. In regard to claims 27 and 36, Billet et al disclose that a sealing adhesive material is inserted into the root canal followed by the plug (column 3, lines 3-6), but the neglect to set forth the adhesive’s viscosity as is specifically claimed. One of ordinary skill in the art would have found it obvious to use an adhesive of the viscosity claimed as a matter of routine practice of the Billet et al method. In regard to claim 29, Billet et al discloses a light source 9 but fails to specifically state that the light source 9 uses an optical fiber as claimed. In Billet Figure 2, the light source appears to be a conventional light/optic fiber, to have merely selected such a conventional light source would have been obvious to the ordinarily skilled artisan. Finally Billet et al fail to disclose that a part of 17 sticking out of the root canal can be severed as specifically claimed. One of ordinary skill in the art, however, would have readily

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recognized that such a post can be and often requires cutting and modification to properly receive a crown attached thereto and that providing for such would have been conventional and obvious.

Claims 9-11, 19, 28 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Billet et al (WO 98/11842) (for purposes of this rejection US 6,183,253 B1 is relied upon as an English translation of the earlier published PCT application) in view of Vari (5,503,559).

Vari teaches the use of fluorescence materials in root canal photo sealers that can be used to indicate the degree of curing of the root canal sealer material (note column 10, lines 10-23). To have provided the Billet et al photo activated sealer with phosphorescent materials as taught by Vari so that the degree of curing could be checked would have been obvious to one of ordinary skill in the art. In regard to claims 10 and 11, the selection of known prior art phosphorescent materials for the phosphorescent materials suggested by Vari would have been obvious to one of ordinary skill in the art.

### **Allowable Subject Matter**

Claims 37-41 are allowed. Claims 12, 13, 20, 21, 26 and 34 are objected to as being written on a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the claims from which they depend.

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**Prior Art**

Weil (5,284,443), Weissman (5,326,263), Sicurelli, Jr. et al (5,915,970), Sicurelli, Jr. et al (5,919,044), Reynaud et al (5,989,032), Kim (6,267,597 B1), Sicurelli, Jr. et al (6,371,763 B1), Lopez (6,428,319 B1), Jensen et al (6,500,004 B2), Schumacher (DE 4413272 A1), Maletz et al (DE 19646037 A1), and Martelli (EP 0938875 A2) are made of record.

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number (703) 308-0770. Fax (703) 872-9302. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (703) 308-2582.

R.Lewis  
March 17, 2003



Ralph A. Lewis  
Primary Examiner  
AU 3732